IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

FRIDAY, THE 16TH NOVEMBER 2007 / 25TH KARTHIKA 1929

MFA.No. 895 of 2000(B)

WCC.23/1995 of WORKMEN'S COMPENSATION COMMISSIONER (DY.LABOUR COMMISSIONER) ,ERNAKULAM

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APPELLANT/APPLICANT:

XAVIER S/O.ANTAPPAN, CHIRAPARAMBIL HOUSE, CHIRAYAKADAM, KANNAMALLY, COCHIN 8.

BY ADV. SMT.VANAJA MADHAVAN

RESPONDENTS/OPPOSITE PARTY:

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1. CHAIRMAN, COCHIN PORT TRUST, COCHIN.

(*)2. MATHEW MANIPADAM, DY. CONSERVATOR OFFICE, COCHIN PORT TRUST, COCHIN (DELETED)

(*)R2 IS DELETED FROM THE PARTY ARRAY AS PER ORDER DATED 31.10.2007 IN IA NO.2531/2007.

R1 BY ADV. SRI.A.M.SHAFFIQUE
SMT.PRIYA MAHESH
SMT.PRIYA MANJOORAN

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 16.11.2007 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR ,J.

M.F.A.No.905 of 2000

Dated, this the 16th day of November, 2007

JUDGMENT

The claimant workman in W.C.C.No.23/1995 on the file of the Commissioner for Workmen's Compensation (Deputy Labour Commissioner), Ernakulam is the appellant. He was working as an Electrical Assistant. He met with an accident on 1.3.1993 at 6.30 p.m. and suffered the following injuries:

1. A long leg cart sensory blunting in the internal four toes.
2. Fracture lower 3rd tibin Fracture Fibula.

Appellant was admitted in Medical Trust Hospital. He claimed a total compensation of Rs.75,000/-. Respondent filed a written statement denying the right to get compensation. Employer-employee relationship was denied. The quantum of compensation claimed was also disputed. The Deputy Labour Commissioner has found that there is no loss of earning capacity and dismissed the application. Challenging that order this appeal is filed.

2. The learned counsel appearing for the appellant submits that the view taken by the Deputy Labour Commissioner is not legal. It is submitted that the appellant was undergoing treatment and he suffered a lot. It is also submitted that another injured filed O.S.No.250/1996 before the Munsiff's Court, Cochin and in that case the learned Munsiff had awarded an amount of Rs.15,000/- as compensation to him and that judgment has become final and conclusive.

3. The only question arising for consideration in this appeal is whether the appellant is entitled to get compensation. The Deputy Labour Commissioner found that the appellant did not suffer any permanent disability. That contention was raised before the Civil Court also. But the Civil Court directed to pay compensation. Considering all aspects of the matter I am of the view that the respondent should have been directed to pay a compensation of Rs.10,000/- towards treatment expenses, etc. I make it clear that it is in the form of an ex-gratia payment only on the fact that one among the injured got a decree from the Civil Court which had become final and conclusive. I also make it clear that the appellant is not entitled to get any interest in case the amount is deposited within three months from the date of receipt of a copy of this judgment. If there is failure to deposit the amount within three months the appellant is entitled to get interest from the date of filing of appeal.

In the result, appeal is allowed in part. An award is passed in favour of the appellant allowing him to recover an amount of Rs.10,000/- from the respondent as ex-gratia payment. Appellant is entitled to get interest if the amount is not deposited within three months from the date of receipt of a copy of this judgment. Respondent is directed to deposit the amount within three months and on deposit the appellant is entitled to withdraw the entire amount.

K. PADMANABHAN NAIR,
JUDGE.

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K.PADMANABHAN NAIR, J.

M.F.A.No.905 of 2000

JUDGMENT

16th November, 2007.